

03 MAY 14 PM 6:24

FILED CLERK OF DISTRICT COURT
BOISE, IDAHO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, MICHAEL B.
HINCKLEY, JACQUELINE T. HLADUN,
MARILYN J. CRAIG, JEFFERY P.
CLEVINGER, and TIMOTHY C.
KAUFMANN, individually and on behalf of
those similarly situated,

Plaintiffs,

vs.

MICRON ELECTRONICS, INC., a
Minnesota corporation,

Defendant.

Case No. CIV 01-0244-S-BLW

**JOINT DISCOVERY PLAN AND
REPORT**

Plaintiffs, by and through their counsel of record, and Defendant, by and through its counsel of record, hereby submit this Joint Discovery Plan and Report for consideration by the Court as ordered in its April 14, 2003 Scheduling Order and in preparation for the 10:00 a.m. May 21, 2003 telephonic scheduling conference.

1. Meeting of the Parties.

Pursuant to the Court's instructions, counsel met on Monday, May 5, 2003 at 3:30 p.m. at Defendant's counsel's office. At this meeting counsel for the parties attempted to reach agreement as to a schedule for the remaining Second Notice stage and for discovery for the remainder of the case (decertification and/or final certification and trial).

DEFENDANT MICRON ELECTRONICS, INC.'S LITIGATION PLAN FORM - 1

Boise-156673.1 0026493-00046

165

Although counsel were able to reach agreement on certain scheduling issues, despite the best efforts of the parties, there are several issues which remain unresolved.

The resolved and unresolved issues, as well as the areas of agreement and disagreement between the parties, are set forth below.

2. Second Notice Period.

Plaintiffs have agreed to submit a motion for approval of the process followed for the first notice period and for approval to send out the second notice. If the Court grants permission, the parties agree on a second group mailing date of **June 2, 2003**, for the mailing of notice packages to individuals whose original notice packages were returned as undeliverable, in accordance with paragraph six of the Stipulation Re: Provision of Notice. (Docket No. 160.) Potential claimants will then have thirty (30) days, or until **July 2, 2003**, to postmark and return the executed consent forms.

3. Settlement and Alternative Dispute Resolution.

The Parties have agreed that settlement prospects are unknown at this time, although the Parties' attempt to mediate this case with a professional mediator in June of 2002 was unsuccessful.

a. Plaintiff's Position

Plaintiff would like to conduct mediation after the second notice period has expired, but before additional discovery has been undertaken, so as to avoid potentially unnecessary litigation costs. Plaintiffs propose mediation in September of 2003.

b. Defendant's Position

Defendant asserts that the Parties will be in a better position to consider settlement

negotiations once the second notice period has expired and some additional discovery has been conducted.

4. Discovery Deadlines.

a. Plaintiff's Position

Plaintiffs' position is that the additional fact discovery to be completed can be finished by **December 15, 2003**. Plaintiffs request a separate period for expert discovery to commence after the Court conducts a hearing on final certification and rules on the whether the class will be certified.

b. Defendant's Position

Defendant will need time to gather and analyze information relevant to additional claimants who have joined this action and with regard to others who may join in the second notice stage. In order to adequately prepare for a trial in this action, Defendant anticipates that substantial depositions may need to be taken, including continuation of previous depositions with regard to merits discovery (as opposed to depositions targeted to conditional certification).

As justification for a longer discovery period, Defendants note the Court's findings in its previous Order "[T]he discovery that has been done appears relatively narrow in scope. The Court's Scheduling Order in this case set up a discovery schedule for 'conditional certification' issues only." (Docket No. 155, p.4).

Therefore, Defendant requests that all pre-trial discovery be completed on or before **June 30, 2004**. This deadline would *include* sufficient time to complete all expert discovery as well. Defendants do not wish to separate different periods for fact and expert discovery.

5. Manner and Form of Discovery.

a. Written Discovery

The parties agree that all written discovery may be taken in the form and manner provided by the Federal Rules of Civil Procedure. With regard to discovery in this stage of the case the parties propose to initially abide by the limits on interrogatories set forth under Local Civil Rule 33.1, but reserve the right to discuss extension of these limits should the need arise. Interrogatories previously served in the conditional certification stage will not be counted in determining the limits under Local Civil Rule 33.1. Any request to extend these limits must be presented by motion or stipulation.

b. Oral Depositions

For deponents who have not been previously deposed, the parties agree to initially abide by the *length* of deposition requirement set forth in Local Civil Rule 30.1, following Fed.R.Civ.P. 30(d)(2). However, parties reserve the right to address and attempt to resolve any future disputes with respect to the number or length of depositions, should the need arise. Any request to limit the number of depositions or extend the length of deposition requirement must be presented by motion or stipulation.

i. Plaintiff's Position

Plaintiffs wish to limit the number of depositions each side can take in this phase of the litigation. Plaintiff would limit each side to 10 additional depositions. Plaintiffs object to unlimited depositions of each and every opt-in.

ii. Defendant's Position

Because of the number of individuals involved and the complexity of issues, the parties

initially agreed to waive the limitation on the number of depositions set forth in Local Civil Rule 30.1. (Docket No. 53). Defendants would seek to continue this situation. There are currently six Plaintiffs and 80 opt-in claimants, with more claimants expected to opt-in after completion of the second notice period. As noted previously, the Court has held that discovery conducted prior to the conditional certification stage was narrow and limited in scope. It is unfair for Plaintiffs' to take the position that Defendants are precluded from preparing a full and complete defense and trial presentation.

Defendants also take the position that time spent in depositions previously conducted in the conditional certification stage do not count toward the length of deposition requirement set forth in Local Civil Rule 30.1, following Fed.R.Civ.P. 30(d)(2).

5. Decertification Deadline / Deadline for Final Certification.

a. Plaintiff's Position

Plaintiff requests a deadline to file its Motion for Final Certification of **January 5, 2004.**

b. Defendant's Position

Defendant requests a deadline to file its Motion for Decertification of **August 31, 2004.**

6. Expert Testimony Disclosures Cut-Off Date.

a. Plaintiff's Position

Plaintiff requests the following dates for expert witness disclosures:

Plaintiff: **April 5, 2004.**

Defendant: **May 5, 2004.**

Rebuttal: **June 7, 2004.**

b. Defendant's Position

Defendant requests the following dates for expert witness disclosures:

Plaintiff: January 5, 2004.

Defendant: February 23, 2004.

Rebuttal: March 31, 2004.

7. Dispositive Motions Deadline.

a. Plaintiff's Position

Plaintiff requests a dispositive motion deadline of February, 2004.

b. Defendant's Position

Defendant requests a dispositive motion deadline of August 31, 2004.

8. Pretrial Conference Date.

The parties request that a pretrial conference date be entered by the Court at the same time the trial setting is determined.

9. Trial Date and Trial Track.

The parties agree that this is now a "Complex Track" case and propose that a trial estimate of 25 trial days be set (which estimate assumes that the entire class or a major portion thereof proceed to trial).

a. Plaintiff's Position

Plaintiff proposes trial dates beginning in or around December, 2004.

b. Defendant's Position

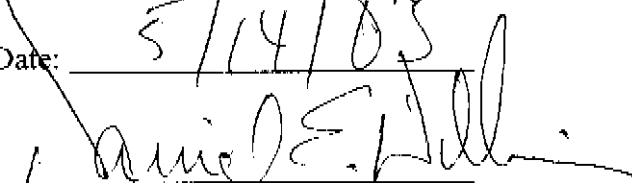
Defendant proposes trial dates beginning in or around June 2005. Defendants request that any trial setting be five or six months after hearing on motions for decertification and/or

final certification. Any ruling on such motions will have a substantial impact on the scope or parameters of the class to be tried. It would be in the interests of judicial economy and assist in conserving costs for the parties to have the class size and scope of claims precisely defined well in advance of the date of commencement of trial.

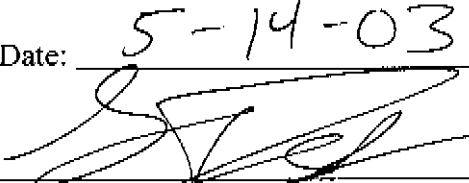
10. Joinder of Parties and Amendment of Pleadings Cut-Off Date.

The parties agree on a deadline of **August 21, 2003** for joinder of parties and amendment of pleadings.

Respectfully submitted,

Date: 5/14/03


Attorneys or Plaintiff
William H. Thomas
ISB No. 3154
wmthomas@idahoatty.com
Daniel E. Williams
ISB No. 3920
danw@idahoatty.com
HUNTLEY PARK, THOMAS,
BURKETT, OLSEN & WILLIAMS
250 S. Fifth St., Suite 660
P.O. Box 2188
Boise, Idaho 83701-2188
(208) 345-7800
Facsimile: (208) 345-7894

Date: 5-14-03


Attorneys for Defendants
Kim J Dockstader
ISB No. 4207
kjdockstader@stoel.com
Gregory C. Tollefson
ISB No. 5643
gctollefson@stoel.com
STOEL RIVES LLP
101 S. Capitol Blvd, Suite 1900
Boise, Idaho 83702
(208) 389-9000
Facsimile: (208) 389-9040